

1 CORBY KUCIEMBA, et al.,  
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3 Plaintiffs,  
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5 v.  
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7 VICTORY WOODWORKS, INC.,  
8 Defendant.

9 Case No. 20-cv-09355-MMC  
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**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS; DISMISSING  
FIRST AMENDED COMPLAINT  
WITHOUT FURTHER LEAVE TO  
AMEND**

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13 Before the Court is defendant Victory Woodworks, Inc.'s Motion, filed April 1,  
14 2021, to Dismiss Plaintiffs' First Amended Complaint ["FAC"] for Failure to State a Claim.  
15 Plaintiffs Corby Kuciembra and Robert Kuciembra have filed opposition, to which  
16 defendant has replied. The matter came on regularly for hearing on May 7, 2021. Martin  
17 Zurada of Venardi Zurada LLP appeared on behalf of plaintiffs; William Bogdan of  
18 Hinshaw & Culbertson LLP appeared on behalf of defendant.

19 Having read and considered the parties' respective written submissions as well as  
20 the arguments of counsel at the above-referenced hearing, the Court, for the reasons  
21 stated in detail on the record at said hearing, as well as the hearing conducted February  
22 12, 2021, rules as follows:

- 23 1. To the extent plaintiffs' claims are based on allegations that Corby  
24 Kuciembra contracted COVID-19 "through direct contact with" Robert Kuciembra (see FAC  
25 ¶ 22), such claims are barred by the exclusive remedy provisions of California's workers'  
26 compensation statutes and, thus, are subject to dismissal. See Cal. Labor Code  
27 §§ 3600, 3602.
- 28 2. To the extent plaintiffs' claims are based on allegations that Corby

1 Kuciomba contracted COVID-19 “indirectly through fomites such as [Robert Kuciomba’s]  
2 clothing” (see FAC ¶ 22), such claims are subject to dismissal for failure to plead a  
3 plausible claim.

4       3. To the extent the above-described claims are neither barred by statute nor  
5 deemed insufficiently pleaded, such claims are subject to dismissal for the reason that  
6 defendant’s duty to provide a safe workplace to its employees does not extend to  
7 nonemployees who, like Corby Kuciomba, contract a viral infection away from those  
8 premises.

9           Accordingly, the Motion to Dismiss is hereby GRANTED, and the instant action is  
10 hereby DISMISSED.

11           **IT IS SO ORDERED.**

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13 Dated: May 10, 2021  
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MAXINE M. CHESNEY  
United States District Judge